FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
First Appeal No. 172 of 2006
with
Civil application no. 3967 of 2001

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar' ɵrders. Court' ɵr Judge' ɵrders

Mr. N. L. Shimpi i/b. P.K. Dhakephalkar for appellant.
None for respondents.

CORAM: R.M.S. KHANDEPARKAR
&
MRS. ROSHAN DALVI JJ.
DATE:27/03/2006

P.C.:

Heard learned advocate for the appellant. The appellant challenges the judgment and decree dated 21st August 2000 in Special Civil Suit No. 567 of 1997 passed by the Joint Civil Judge, Thane. By the impugned decree the trial court has dismissed the suit for partition on the ground that the appellant had already received her share in the property of her father by way of consideration of Rs.2 lakhs on execution of

exhibit 63.

On hearing the learned advocate for the appellant and on perusal of the record it is apparent that the trial court had arrived at a categorical finding that the appellant had claimed 1/9th share in the properties of her father when one of the properties worth Rs.10 lakh was sold. An amount of Rs.2 lakhs was paid to the appellant towards her share, which according to the appellant related to the share in the property sold whereas according to the respondent it related to the share in all the properties of her father. Undisputedly the property which was sold was for Rs.10 lakhs and considering the 1/9th share of the appellant in the said property, she would have been entitled to claim Rs.1,12,355.52 paise. There is a clear finding by the trial court in that regard. The same is undisputed as well as undisputable. At the same time it is also undisputed fact that the appellant had received Rs.2 lakhs on sale of the said property. There is no explanation from the appellant as to why the amount over and above Rs.1,12,355.52 was to be paid to the appellant if the appellant was having only 1/9th share in the said property and the said property was sold for

a total consideration of Rs.10,11,197/-. It is also a matter of record that exhibit 63 was duly executed, not only by the appellant but also by her son. Neither execution of exhibit 63 has been disputed nor the contents thereof. That being so the finding arrived at by the trial court that the appellant duly received her share of Rs.2 lakhs, vide exhibit 63, cannot be find fault with. Hence no fault can be found with the order of dismissal of the suit for partition filed by the appellant. Hence no interference is called for. The appeal is therefore summarily dismissed in terms of Order 41 Rule 11 of C.P.C.

In view of the dismissal of the appeal Civil application no. 3967 of 2001 does not survive and is disposed of accordingly.

(MRS. ROSHAN DALVI J.) (R.M.S.KHANDEPARKAR J)